IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 17945 of 2005(J)

IA.741/05 IN OS.589/2000 of MUNSIFF'S COURT, THIRUVALLA

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PETITIONER:

SHIBU. C. JOHN, S/O. YOHANNAN,
PADINJARE VELOOR HOUSE, VALAMALA MURI,
KUNNAMTHANAM VILLAGE, MALLAPPALLY TALUK.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

RESPONDENTS:

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1. JOHN YOHANNAN, S/O. YOHANNAN,
THEKKEPARAMBIL HOUSE, VALAMALA MURI,
KUNNAMTHANAM VILLAGE, MALLAPPALLY TALUK.

2. RACHEL YOHANNAN, W/O. YOHANNAN,
PADINJARE VELOOR HOUSE, VALAMALA MURI,
KUNNAMTHANAM VILLAGE, MALLAPPALLY TALUK.

R1 BY ADV. SRI.P.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.17945/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN OS.589/2000 FILED BY R1 BEFORE MUNSIFF'S cOURT, THIRUVALLA, DT.10.8.2000.

EXT.P2 – TRUE COPY OF WRITTEN STATEMENT IN EXT.P1 SUIT, FILED BY PETR. DATED 20.3.03.

EXT.P3 – TRUE COPY OF AMENDMENT APPLICATION I.A.741/05 FILED IN O.S.589 OF 2000 BY R1 BEFORE MUNSIFF, THIRUVALLA.

EXT.P4 – TRUE COPY OF OBJECTION FILED BY PETR. AGAINST I.A.741/05 FILED BY R1.

EXT.P5 – TRUE COPY OF ORDER IN EXT.P3 I.A., DT.6.6.05.

EXT.P6 – TRUE COPY OF DEPOSITION OF PW.1 IN OS.589/2000 OF MUNSIFF, THIRUVALLA.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.17945 OF 2005

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DATED THIS THE 9th JULY, 2007

J U D G M E N T

Heard Mr.Sathish Ninan, learned counsel for the petitioner and Mr.P.Haridas, learned counsel for the 1st respondent.

2. Impugned in this Writ Petition under Article 227 is Ext.P5 order by which the learned Munsiff has allowed an application for amendment of the plaint so as to change the boundary description of plaint item No.2 property. Ext.P3 is the application for amendment which was filed only after the 1st respondent-plaintiff had given evidence as PW.1. Ext.P6 is the deposition given by the plaintiff. On going through Ext.P6, it will be seen that questions regarding all the boundaries shown in the unamended plaint had been put to the plaintiff and he specifically admitted that all those boundaries are correct. Obviously, those questions were asked in the light of the commissioner's report available in the case which would reveal that the boundaries could not have been correct. Though specific questions were asked, the 1st respondent-plaintiff asserted that those boundaries as stated in the plaint are correct. On the next day, the amendment application was filed by him so as to change the boundaries of item No.2 so that the same will conform to the commissioner's report. The

ground stated is that mistakes crept into the plaint while the same was drafted by the clerk of the advocate for the plaintiff.

3. There is much force in the submission of Mr.Sathish Ninan that the proposed amendment will enable the 1st respondent-plaintiff to get away from the effect of the admissions made by him in Ext.P6 deposition which were fatal as far as the same related to item No.2. In other words, because of the amendment, a suit which was liable to be dismissed as regards item No.2 is getting a new lease of life. Notwithstanding the force I notice in the submission of Mr.Sathish Ninan, in view of the discernible position that the amendment is necessary for resolving the real controversy between the parties and the circumstance that in the body of the unamended plaint, a correct description of the property is available, I do not propose to interfere with Ext.P5 in the visitorial jurisdiction of this Court. But I feel that the learned Munsiff was unduly soft on the 1st respondent in the matter of imposing costs.

4. Accordingly, even as I confirm Ext.P5 decision, the same will stand modified to the extent of enhancing the amount of costs payable from Rs.500/- to Rs.3000/-. The additional amount payable by way of costs will be paid by the 1st respondent-plaintiff to the petitioner either

directly or through his counsel in this Court or in the court below, within two weeks of receiving copy of this judgment.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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